MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 45 OF 1996

MUKUNDA TATYABA SHINDE)
resident of Malad, Bhaiyya Vasti
Taluka Baramati, Dist. Pune) .. APPELLANT
(Orig.Accd.No. 1)

VERSUS

THE STATE OF MAHARASHTRA) .. RESPONDENT

Shri Macchindra Deshmukh h/f Milind Deshmukh for appellant

Shri Pradeep Hingorani, APP

CORAM: **SMT. RANJANA DESAI, J.**

DATE: AUGUST 22, 2007.

ORAL JUDGMENT:

. The appellant (original accused) was tried in the Court of Additional Sessions Judge, Baramati in Sessions Case No. 69 of 1991 for offences punishable under Sections 376, 323 and 506 of the I.P.C.

2. At the trial, the case of the prosecution was as under:

. Pushpa, the prosecutrix is a resident of village Malad, Taluka Baramati, District Pune. The appellant (hereinafter referred to as "the accused" for convenience) resides in the same village. Pushpa was residing with her husband Bajirao and mother-in-law Kashibai. The accused, the prosecutrix, her husband and her mother-in-law Kashibai are labourers.

. On 4/3/91 at about 9 a.m. Pushpa went to nearby canal to wash clothes. While she was returning from the canal on the way the accused met her. The accused dragged her inside sugarcane crop which was standing on the field of Gujar Deosthan. He punched her on the face and had forcible sexual intercourse with her. Pushpa went home crying and narrated the incident to her mother-in-law Kashibai. Pushpa and Kashibai reached Baramati Police Station which is about two kilometres from their house. Pushpa lodged her FIR. Offence being C.R. No. 17/91 was registered. Pushpa was sent for medical examination. Dr. (Mrs.) Suryawanshi examined her. Investigation was set into motion on the basis of Pushpa’s FIR. The accused was not found in his house from 4/3/91 to 8/3/91. On

9/3/91 he was arrested. After completion of the investigation the accused came to be charged as aforesaid.

3. In support of its case the prosecution examined eight witnesses. The prosecution case rests basically on the evidence of PW 1 Pushpa. Prosecution also examined Kashibai, the mother-in-law of Pushpa. Particulars of medical examination of Pushpa are given by PW 8 Dr. (Mrs.) Manik Suryawanshi. Details of investigation are given by PW 7, API Somnath Salunkhe. PW 6 Dr. Mahadeo Vishwanath Swami has deposed about the medical examination of the accused.

4. The defence of the accused was one of total denial. In his statement recorded under Section 313 of the Code of Criminal Procedure, the accused stated that he used to talk to Pushpa. Everytime Pushpa used to tell him that he should leave his wife and accompany her. Because he refused to leave his wife, Pushpa told him that she would settle the score with him and, therefore, she filed a false case against him.

5. After perusing the evidence on record, the

learned Sessions Judge was of the opinion that the prosecution has failed to prove that the accused had committed rape on Pushpa or that the accused voluntarily caused hurt to Pushpa. He, however, came to a conclusion that the accused had assaulted Pushpa with intent to outrage her modesty. He, therefore, acquitted the accused of the offence punishable under Sections 376, 323 and 506 of the I.P.C. He convicted him under Section 354 of the I.P.C. and sentenced him to suffer RI for 18 months. The said judgment and order is challenged in this appeal.

6. I have heard Mr. Macchindra Deshmukh, the learned advocate for the appellant at great length. I have also heard the learned APP. With the assistance of the learned counsel, I have gone through the record of the case.

7. The learned advocate Mr. Deshmukh contended that after having held that the prosecution has failed to prove that the accused had committed rape on Pushpa, it was wrong on the part of the learned Judge to convict the accused under Section 354 of the I.P.C. The learned advocate contended that the learned Judge has rightly disbelieved the

prosecution story about rape because the medical evidence does not support the same. The learned Judge has observed that PW 1 Pushpa has given exaggerated account inasmuch as she has stated that she had suffered a bleeding injury. This is not supported by medical evidence. Pushpa has also stated that buttons of her blouse were broken. However, the blouse produced before the court had no broken buttons. The learned advocate urged that, therefore, Pushpa is a totally unreliable witness and the learned Judge could not have relied partly on her evidence to convict the accused. He submitted that presence of the accused at the scene of offence is doubtful. The learned advocate contended that even if it is assumed that the injury caused to Pushpa was at the instance of the accused, if the story of rape is disbelieved then the learned Judge could not have come to a conclusion that the accused tried to outrage the modesty of Pushpa. At best the learned Judge could have convicted the accused under Section 323 of the I.P.C. Mr. Deshmukh urged that the order of conviction and sentencs deserves to be set aside and in any case, if this court comes to a conclusion that the accused had caused injury on the person of Pushpa then he may be convicted under

Section 323 of the I.P.C.

8. As against this the learned APP submitted that the prosecution has made out its case so far as the offence under Section 354 is concerned. The offence was committed in the morning. The accused dragged Pushpa in the sugarcane field and caused injury to her. FIR was promptly lodged by Pushpa. Pushpa's evidence is supported by her mother-in-law's evidence. The fact that Pushpa was dragged inside the sugercane field speaks volumes. Under the circumstances, even if it is held that the accused did not commit rape on Pushpa it must be held that the accused outraged the modesty of Pushpa. The learned APP, therefore, submitted that the order of conviction and sentence should not be interfered with.

9. Undoubtedly the prosecution case rests on the evidence of PW 1 Pushpa which is corroborated by evidence of her mother-in-law PW 2 Kashibai. The panchas have not supported the prosecution case. They have turned hostile. Therefore, so far as the details of investigation such as preparation of panchnamas are concerned, it is only the evidence of investigating officer API Salunkhe which can be

relied upon.

10. While coming to the conclusion that the accused has not committed rape on Pushpa, the learned Judge has rightly observed that PW 1 Pushpa has given exaggerated account. She has stated that she had suffered a bleeding injury. However, Dr. Suryawanshi has stated that she did not see any bleeding injury. While Pushpa has stated that her bangles were broken. Dr. Suryawanshi has stated that on Pushpa's wrist she did not notice any scratches. The learned Judge has noted that though Pushpa has stated that the buttons of her blouse were broken they were intact. There is therefore, nothing to indicate that the accused attempted to outrage the modesty of Pushpa. In my opinion, on the basis of the same evidence, therefore, the learned Judge also could not have reached the conclusion that the accused tried to outrage the modesty of Pushpa. Conviction of the accused under Section 354 of the I.P.C. must, therefore, be set aside.

11. It is true that there was injury on the face of Pushpa. PW 8 Dr. Suryawanshi, who examined Pushpa at 4-45 p.m. on 4/3/91 noticed linear abrased wound on Pushpa's face, oblique in

direction. She found superficial skin to be reddish in colour. Therefore, it was a fresh injury. But on the basis of this injury it cannot be stated that the accused tried to outrage Pushpa's modesty. The learned Judge is right when he says that PW 1 Pushpa's evidence cannot be totally discarded because it is also to some extent supported by evidence of PW 2 Kashibai. Morever the incident has taken place at 9 a.m. in the morning and on the same day Pushpa lodged her FIR at Baramati Police Station at about 2-40 p.m. The recording of FIR is, therefore, prompt. The fact that Pushpa along with her mother went from Malad to Baramati Police Station and lodged FIR indicates that some incident did take place. In the FIR she has named the accused and the fact that she has suffered an injury on her face is evident from the medical evidence. Witnesses often give an exaggerated account. However, it is not necessary in all cases to discard the entire evidence of such witnesses. A part of the evidence of such a witness which is supported by other cogent evidence can always be accepted. In this case FIR which is lodged promptly contains the name of the accused. Pushpa has stated that the accused stopped her while she was passing by the sugarcane crop and

asked her whether she will do his work. She asked him what was the work and she told him that she was in a hurry. Pushpa has stated that after the exchange of above conversation the accused caught hold of her hand and took her in the field and dealt fist blows on her face. So far as the finding of the learned Judge that the prosecution has not proved the theory of rape is concerned, the State has not challenged it. But the case of the prosecution that the accused dealt fist blows on her face is supported by the medical evidence. In the absence of any other evidence, indicating that the accused tried to outrage the modesty of Pushpa, the only conclusion which can be drawn is that because the accused was angered by the reply given by Pushpa, he dealt a fist blow on her face causing injury on her face. In that event the offence would be one under Section 323 of the I.P.C. and not under Section 354 of the I.P.C.

12. In my opinion, in the circumstances of the case, the conviction and sentence of the accused under Section 354 of the I.P.C. will have to be set aside. The accused will have to be convicted under Section 323 of the I.P.C. Hence I pass the following order:

. "The conviction and sentence of the appellant/accused Mukunda Tatyaba Shende, for the offence under Section 354 of the I.P.C. is quashed and set aside. Instead he is convicted under Section 323 of the I.P.C. and sentenced to suffer RI for six months. Needless to say that the accused shall get set off for the sentence already undergone by him.

. The accused is on bail. He should surrender to the bail. His bail bond shall stand cancelled.

. The appeal is disposed of in the aforesaid terms."

13. I record my appreciation for the assistance given to me by Mr. Machindra Deshmukh.

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CRIMINAL APPEAL NO. 45 OF 1996

MUKUNDA TATYABA SHINDE .. APPELLANT
(Orig.Accd.No. 1)

VERSUS

THE STATE OF MAHARASHTRA .. RESPONDENT

Shri Macchindra Deshmukh h/f Milind Deshmukh for appellant
Shri Pradeep Hingorani, APP

CORAM: **SMT. RANJANA DESAI, J.**
DATE: AUGUST 22, 2007.

OPERATIVE PART OF THE ORDER:

. For the reasons recorded in the oral judgment, this court has passed the following order:

. "The conviction and sentence of the appellant/accused Mukunda Tatyaba Shende, for the

offence under Section 354 of the I.P.C. is quashed and set aside. Instead he is convicted under Section 323 of the I.P.C. and sentenced to suffer RI for six months. Needless to say that the accused shall get set off for the sentence already undergone by him.

. The accused is on bail. He should surrender to the bail. His bail bond shall stand cancelled.

. The appeal is disposed of in the aforesaid terms."

JUDGE.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 45 OF 1996

DATE OF DECISION:22/8/2007

Submitted for
approval.

THE HON'BLE (SMT.) JUSTICE RANJANA DESAI:

THE HON'BLE SHRI JUSTICE:

1. Whether Reporters of Local Papers)
be allowed to see the Judgment?)

2. To be referred to the Reporters or)
not?)

3. Whether Their Lordships wish to)
see the fair copy of the Judgment?)

4. Whether this case involves a)

substantial question of law as to)
the interpretation of the)
Constitution of India, 1950 or any)
Order made thereunder?)

5. Whether it is to be circulated to)
the Civil Judges?)

6. Whether the case involves an impor-)
tant question of law and whether)
a copy of the judgment should be)
sent to Nagpur, Aurangabad and Goa)
Offices?)